

**IN THE CIRCUIT COURT OF APPEALS
SOUTHERN DISTRICT**

Case Nos. SD24829, SD24836 and SD24840

**KENNETH L. KUBLEY,
Appellant/Respondent,
v.**

**MOLLY M. BROOKS,
Respondent/Cross-Appellant,**

and

**DIRECTOR OF THE DIVISION OF CHILD SUPPORT ENFORCEMENT,
DEPARTMENT OF SOCIAL SERVICES,
Respondent/Cross-Appellant.**

**Appeal from the Circuit Court of Phelps County, Missouri
The Honorable Ralph J. Haslag, Judge**

REPLY BRIEF OF APPELLANT/RESPONDENT KENNETH KUBLEY

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The Trial Court did not err by refusing to award Respondent/Cross Appellant, Molly Brooks actual and punitive damages against Appellant/Cross-Respondent, Kenneth Kubley because the actions of the Prosecuting Attorney in seeking a warrant against Respondent/Cross Appellant, Molly Brooks was an intervening superseding cause of any conduct on the part of the Appellant/Cross-Respondent, Kenneth Kubley.

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The Trial Court did not err by refusing to award Respondent/Cross Appellant, Molly Brooks actual and punitive damages against Appellant/Cross-Respondent, Kenneth Kubley because the actions of the Prosecuting Attorney in seeking a warrant against Respondent/Cross Appellant, Molly Brooks was an intervening superseding cause of any conduct on the part of the Appellant/Cross-Respondent, Kenneth Kubley.

ARGUMENT

As the Trial Court noted at (Legal File pg. 109 of its Judgment) only the Prosecuting Attorney could have requested that a warrant for Ms. Brooks be issued, without the issuance of a warrant by the Prosecuting Attorney, Ms. Brooks would not have been subjected to any potential humiliation or been placed in an emotionally stressful circumstance.

Moreover, Appellant/Cross-Respondent, Kenneth Kubley was not an attorney and was not in a position to anticipate that the act of the Prosecuting Attorney of Phelps County would be a wrongful act. Furthermore, in seeking to find Respondent/Cross-Appellant Ms. Brooks in contempt of court, without a basis in a proper court order; the Phelps County Prosecuting Attorney, did an extraordinary negligent act and by so doing rendered any potentially tortious conduct on the part of the Appellant/Cross-Respondent, Kenneth Kubley Remote and not the proximate cause of injury in the instant case. *Buck v. Union Electric*, 887 S.W. 2d 430, 443-46 (Mo App. 1994).

In summary, whether or not a superceding intervening cause exists that would relieve a potential

Defendant of liability is determined on the facts and circumstances of each case. *Id* at 443.

The trial court on the facts presented to it at hearing ruled correctly in determining that no tort liability could be attributed to Appellant/Cross-Respondent, Kenneth Kubley.

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**Respectfully Submitted,
STEPHEN W. DANIELS**

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CERTIFICATE OF SERVICE

The undersigned hereby certify that two (2) copies and a diskette containing such was served by mailing copies thereof, via postage paid U.S. Mail, this 27th day of March 2003, to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(c), the undersigned certifies that Appellant/Cross-Respondent, Kenneth Kubley's Reply Brief is in compliance with the limitations contained in Rule 84.06(c); that said Reply Brief contains 605 words; and that the diskette which contains said Reply Brief has been scanned and is virus free.

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APPENDIX

